Bail Slip

The Appellant/1st Accused was directed to be released on bail by the order of this Court dated 14.02.2002 and made in Crl.M.P.No.644/02.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No.930 of 2001

Sasikumar .. Appellant/accused

vs

STATE:
rep. by The Inspector of Police
P.2 Otteri Police Station
Chennai.12.
(Crime No.1201/1997) .. Respondent/complainant

This appeal is filed against the Judgment made in S.C.No. 546 of 1999 dated 02.03.2001 on the file of the VII Additional Sessions Judge, Chennai.

For appellant : Mr.R.C.Paul Kanagaraj

For respondent : Mr.V.R.Balasubramaniam
Additional Public Prosecutor.

JUDGMENT

This appeal has been preferred against the Judgment in S.C.No.546 of 1999 on the file of the VII Additional Sessions Judge, Chennai.

2. The short facts of the case of the prosecution sans irrelevant particulars are, that the marriage between the first accused and the deceased Sujatha took place on 08.09.1995 and at the time of marriage, the deceased Sujatha was presented with 20 sovereigns of gold ornaments by her parents and after her marriage, it is the case of the prosecution

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that the deceased Sujatha was subjected to dowry harassment and she was insisted to bring Rs.one lakh more towards dowry and due to the unbearable cruelty and harassment met at the hands of the accused/appellant, the victim had took an extreme step of committing suicide by hanging on 13.07.1997 at 15.30 hours and hence the accused have been charged under Sections 498A and 304 (B) IPC and under Section 4 and 6 (2) of Dowry Prohibition Act 1961. Taking cognizance of the case, learned X Metropolitan Magistrate, Egmore, Chennai issued summons to the accused and on their appearance issued copies of documents under Section 207 of Code of Criminal Procedure and since the case is exclusively triable by the Court of Sessions committed the case for trial to the Court of Sessions under Section 209 Cr.PC.

3. On appearance of the accused, learned Sessions Judge/VII Additional Sessions Judge, City Civil Court, Chennai has framed charges against the accused as indicated above and when the accused were questioned, they pleaded not guilty.

4. Before the trial Court, P.Ws 1 to 14 were examined. Exs. P1 to P17 were exhibited and M.O. 1 was marked.

5. P.W.1 is the father of the deceased Sujatha who was his third daughter. According to him, the marriage between the first accused Sasikumar and the deceased Sujatha was solemnised on 08.09.1995 and at the time of marriage, he had presented 39 sovereigns of gold ornaments, 2 kilo grams of silver articles and house-hold articles to the value of Rs.50,000/-, 10 sovereigns of gold chain and Rs.10,000/- towards the apparels of the bridegroom and both A1 and her daughter Sujatha lived happily thereafter for nearly three months and on the first Deepavali he has also presented gold ring weighing one sovereign to A1. P.W.1 would further state that A1 was conducting Optical Shop and in order to expand the shop, he demanded Rs.50,000/- as an additional dowry. But he has replied that he is not in a position to give Rs.50,000/- at present and he will try to give later. P.W.1 would state that even in his presence the first accused had beat the deceased Sujatha and that they were residing at Devraja Mudali street, Patalam and that the couple were blessed with a child. But later his daughter was driven out of the house by A1 along with the child and that the accused have demanded a further sum of Rs.one lakh towards additional dowry. Since he could not fulfil the additional demand of dowry made by the accused, his daughter along with her child came to his house on 11.07.1997 and at his request A1 came to his house and took P.W.1's daughter and her child and that he had received an information through telephone at about 6.00 pm. On 13.07.1997 informing that his daughter Sujatha had committed suicide by hanging. Immediately, he rushed to the house of A1 but could not find the corpse of his daughter. But could find the dead body of his daughter at K.J.Hospital with ligature mark on her neck and that a complaint was preferred by P.W.4 with the Police.

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5a. P.W.2 is the wife of P.W.1. She would admit the relationship with A1. She would corroborate the evidence of P.W.1. She would say that her daughter deceased Sujatha had complained to her that she was subjected to cruelty and dowry harassment and that she was insisted to bring Rs.1 lakh from her parents by A1, which made her to come out of the matrimonial home to reside with her parents along with the child. According to P.W.2, the deceased Sujatha had left the matrimonial home and went to her sister Indra's house at Gummidipoondi and only there she had informed P.W.2 that A1 had demanded more dowry from her and that the accused failed to provide proper food to her and not even cared to maintain the child and A1 had refused to give money for purchasing milk for the child and that there was a mediation took place between A1 and the deceased Sujatha in the presence of P.W.2's eldest son-in-law. Thereafter her daughter Sujatha was sent to her husband's (A1's) house on 12.07.1997 and she received bad news that her daughter Sujatha had taken the extreme step of committing suicide by hanging on 13.7.1997 at 5.00 p.m. and immediately she rushed to A1's house and from there to Kilpauk Government Medical College Hospital where she saw her daughter Sujatha lying dead.

5b. P.W.3 is a neighbour who speaks about the marriage which took place between A1 and the deceased Sujatha. According to him, at the time of marriage 50 sovereigns of gold ornaments were presented by P.W.1 and another 7 sovereigns of gold ornaments were also presented to A1 at the time of marriage. According to him, P.W.1 has informed that his daughter Sujatha was subjected to dowry harassment by A1 and was insisted to bring Rs.1 lakh to expand his optical business.

5c. P.W.4 is also another neighbour of A1 who had helped A1 to take Sujatha in an auto to the hospital, after she had committed suicide by hanging . Ex.P.2 is the complaint preferred by P.W.4 with Ottery Police Station.

5d. P.Ws. 5 and 6 have not supported the case of prosecution and hence, they were treated as hostile witnesses.

5e. P.W.7 is the doctor who had examined deceased Sujatha at the time when she was brought to the E.S.I. Hospital Mylapore at about 5.45 P.M. on 13.07.1997. Ex.P3 is the Certificate issued by P.W.7 declaring Sujatha as dead.

5f. P.W.8 is the doctor who had conducted autopsy on the corpse of Sujatha on 14.07.1997 at 4.30 pm. Ex.P.12 is the postmortem report. P.W.8 has opined that 24 hours prior to autopsy, the deceased would have died due to asphyxia due to hanging.

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5g. P.W.9 is the Sub Inspector of Police who had registered the case in Crime No.1201 of 1997 under Section 174 Cr.PC on the basis of Ex.P.2 complaint preferred by P.W.4. Ex.P.4 is the copy of First Information Report.

5h. P.W.14 is the investigating Officer in this case. He had visited the place of occurrence on the date of occurrence at 8.45 pm. and prepared Ex. P13 Observation Mahazar in the presence of P.Ws.10 and 11. But both P.Ws.10 and 11 have turned hostile. Ex P14 is the rough sketch drawn by P.W.14. He had recovered M.O.1 Saree under Ex P15 mahazar in the presence of the same witnesses. He had examined the witnesses and recorded their statements and he had sent the corpse for postmortem through police constable and has given a requisition to the Revenue Divisional Officer for enquiry.

5i. P.W.12, who is known to the family of the accused as well as P.W.1, would state that at the time of marriage between A1 and the deceased Sujatha, P.W.1 has agreed to pay Rs.10,000/- to A1 towards dowry and has also agreed to give 60 sovereigns of jewels and that he heard on 13.07.1997 that Sujatha committed suicide.

5j. P.W.13 is the then Revenue Divisional Officer who had conducted enquiry in this case on 13.07.1997 between 12.10 pm. and 3.15 pm. He has recorded the statement of A1 Sasikumar under Ex.P.9 and has recorded the statement of P.W.2 under Ex.P.10. The inquest report is Ex.P.11. He has opined that only due to dowry harassment, the deceased Sujatha has committed suicide. After completing the formalities, P.W.13 has laid charge sheet against the accused on 06.01.1998.

6. When incriminating circumstances under Section 313 Cr.P.C. were put to the accused, they would deny their complicity with the crime.

7. After scanning the evidence both oral and documentary, the learned VII Additional Sessions Judge, City Civil Court, Chennai, has come to the conclusion that A.1 alone is liable to be convicted under Section 304(B) and 498-A IPC and under Section 4 of the Dowry Prohibition Act and accordingly convicted and sentenced A1 to undergo 7 years RI under Section 304(B), one year RI under 498A IPC, and slapped fine of Rs.1000/- with default sentence and one year RI under Section 4 of the Dowry Prohibition Act. The learned trial Judge has acquitted A2 form all the charges levelled against her and also relieved A1 from the charge under Section 6(2) of Dowry Prohibition Act. A3 died pending trial. Aggrieved by the findings of the learned trial Judge, the 1st accused has preferred this appeal.

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8. Now the point for consideration in this appeal is whether the conviction and sentence against the appellant/A1 under Sections 304(B) and 498A IPC and under Section 4 of the Dowry Prohibition Act would be sustainable for the reasons stated in the memorandum of appeal?

9. Heard Mr. R.C.Paul Kanagaraj, learned counsel appearing for the appellant and Mr.V.R.Balasubramaniam, learned Additional Public Prosecutor for the respondent and considered their respective submissions.

10. The Point:

Mr.R.C.Paul Kanagaraj, the learned counsel appearing for the appellant would focus the attention of this Court, the discrepancies crept in the evidence of P.Ws.1 and 2 regarding the demand of dowry by A1. According to P.W.1, A1 had demanded Rs.50,000/- at the first instance over and above the dowry of Rs.50,000/- and 39 sovereigns of gold ornaments and 2 kilograms of silver articles presented at the time of marriage and later, the accused have demanded Rs.one lakh from him. But P.W.2 in her evidence has not stated anything about the demand of dowry of Rs.50,000/-. But she would confine herself only to the demand of Rs.1 lakh by the accused. But both P.Ws.1 and 2 have not specifically stated the date of demand of Rs.1 lakh towards additional dowry.

11. It is pertinent to note at this juncture that it is a definite case of P.W.2 that her daughter Sujatha had left the matrimonial home due to unbearable harassment met at the hands of the accused and went to her eldest daughter Indra's house at Gummidipoondi and that there was a mediation took place between the deceased Sujatha and A1 in the presence of P.W.2's eldest son-in-law at Gummidipoondi. But, curiously, neither the eldest daughter, Indra nor the eldest son-in-law of P.W.2 was examined as prosecution witnesses to substantiate the claim that Sujatha was subjected to dowry harassment and cruelty immediately before she took the extreme step of committing suicide by hanging on 13.07.1997.

12. Yet another flaw pointed out by Mr.R.C.Paul Kanagaraj is, the enquiry report of the Revenue Divisional Officer P.W.13. A perusal of Ex.P.17 will go to show that it is bereft of any particulars regarding the enquiry conducted by him. In Ex.P.17 there is no details regarding who are all the witnesses Revenue Divisional Officer had enquired at the time of enquiry and what was the nature of their statements regarding dowry harassment under which the deceased Sujatha was subjected to.

13. P.W.13 is the then Tahsildar, had examined A1 Sasikumar and recorded his statement Ex.P.9 and also examined P.W.2 Yamunabai and recorded her statement Ex.P.10 and had conducted inquest over the corpse of deceased Sujatha. Ex.P.11 is the inquest report. Even in Ex.P.11 inquest report, there is a specific column provided for to note the reason for the death. But in Ex.P.11 the said column is left blank. Learned trial Judge has convicted A1 only on the basis of the evidence of P.Ws.1

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and 2 who are none other than the parents of the deceased Sujatha. But has failed to note down the above said discrepancies found in their evidence.

14. Learned counsel for the appellant Mr.R.C.Paul Kanagaraj relying upon the decision reported in 2002 (2) Crimes 38(SC) (Mungeshwar Prasad Chaurasia and another v State of Bihar) would contend that if a death of a bride occurred under unnatural circumstances, the important material to be looked into is whether she was subjected to harassment with demand of dowry "soon before her death". The exact observation in the said dictum runs as follows:

> ... " The plea made on that score was to have the sentence reduced. But when we perused the evidence of prosecution, we have noticed that the prosecution did not succeed in showing that the present appellants did anything for subjecting Sudama Devi to harassment with the demand for dowry "soon before her death". PW1 to PW4 were the witnesses examined by the prosecution to prove that Sudama Devi was subjected to harassment with the demand for dowry. All of them said in one accord that husband of Sudama Devi demanded dowry a few months prior to her death. Even if the said period can be treated as falling within the proximity range of 'soon before death', the said acts can be attributed only to Ram Pukar - the husband of the deceased Sudama Devi. None of the witnesses said either directly or indirectly that the present appellants did anything during the said period as against Sudama Devi. Of course, some of the witnesses said that soon after marriage, these appellants asked for more dowry. But that demand was made at a time which was beyond the range of "soon before death" of the deceased."

The ratio laid down in the above said dictum is that dowry demand was made at a time which was beyond the range of "soon before the death", the conviction under Section 304(B) IPC could not be sustained.

15. For the same proposition of law, learned counsel for the appellant Mr.R.C.Paul Kanagaraj relied upon another ratio decidendi in 2004 Crl.L.J. 1765 (Surinder Kaur and another v State of Haryana) wherein it has been held by the Hon'ble Apex Court that if harassment is not proximate to death which was 2 1/2 years after marriage, the accused cannot be convicted.

16. In this case also, P.Ws. 1 and 2 have not very specific in their evidence regarding the date of demand of additional dowry by A1 from his deceased wife Sujatha. Unless it is proved by the prosecution that immediately prior to the occurrence, the victim was subjected to dowry harassment and cruelty, the accused cannot be convicted under Section 304 (B) IPC and with regard to cruelty also there is absolutely no evidence.

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There was no neighbours examined to show that the deceased Sujatha was subjected to cruelty immediately prior to the occurrence. Under such circumstances, I am of the view that the conviction and sentence of the learned trial Judge to A1 under Sections 304B and 498-A IPC, and also under Section 4 of the Dowry Prohibition Act, cannot be sustained. The point is answered accordingly.

17. In the result, the appeal is allowed and the conviction and sentence of the learned Sessions Judge in S.C.No.546 of 1999 on the file of the VII Additional Sessions Judge, City Civil Court, Chennai is set aside and the appellant/accused is acquitted from all the charges levelled against him. Fine amount if any paid, shall be refunded to him. The bail bond stands cancelled.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

kvsg

To

1. The VII Addl. Sessions Judge, City Civil Court, Chennai.
2. -do- through the Prl. Sessions Judge, City Civil Court, Chennai.
3. The Public Prosecutor, High Court, Madras
4. The Inspector of Police, P2, Otteri Police Station, Chennai
5. The Superintendent, Central Prison, Vellore.
6. The Director General of Police, Chennai.
7. The District Collector, Chennai.

Crl.A.No.930/2001

BK(CO)
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